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No. 324

In the Supreme Court of the United States

OCTOBER TERM, 1957

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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OPINIONS BELOW

This petition arises out of the same case as does the petition filed by the Board in No. 273. The opinion of the court below (Pet. 11a-22a) is not yet reported. The findings of fact, conclusions of law, and order of the Board (R. 63-67, 26-61) [1] are reported at 115 NLRB 800.

JURISDICTION

The judgment of the court below (Pet. 23a-24a) was entered on May 9, 1957, and its decree (Pet. 25a-28a) issued on June 7, 1957. The jurisdiction of

[1] "R" references are to the Joint Appendix filed in the court below.

this Court is invoked under 28 U.S.C. 1254 and Section 10(e) of the National Labor Relations Act, as amended, 61 Stat. 147, 29 U.S.C. 160(e).

QUESTIONS PRESENTED

1. Whether the petitioner union's inducement of employees not to handle goods, which would otherwise be proscribed by Section 8(b)(4)(A) of the National Labor Relations Act, as amended, is lawful because another union representing such employees had agreed with their employer by contract that the employees should not be required to handle "unfair goods."

2. Whether substantial evidence supports the Board's conclusion that the petitioner union's inducement of these employees was not in any event primary activity which falls outside the purview of Section 8(b)(4)(A).[2]

3. Whether the Board proceeding was rendered moot by a settlement of the underlying labor dispute.

STATUTE INVOLVED

The pertinent provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), is as follows:

SEC. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

[2] Although the statement of questions presented in the petition (p. 2) does not list this as a separate question, it is apparent from other portions of the petition (p. 10, "5") that it is subsumed under petitioner's question 1.

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * *

STATEMENT

The Board's findings and conclusions, and the decision of the court below are fully set forth in the Board's petition in No. 273 (pp. 3-6). They are restated here only insofar as they require amplification in the light of the questions presented in the present petition.

A. The Board's Findings and Conclusions

1. *Petitioner's activity at the carriers' docks*

On September 15, 1954, petitioner, the bargaining representative of the production and maintenance employees of the American Iron and Machine Works, called a strike at that Company's three plants in Oklahoma City, Oklahoma. Petitioner set up picket lines at each of the plants, and continued to picket there throughout the strike (R. 31; 128-130). The picketing deterred the five motor carriers normally servicing American Iron from making pick-ups and de-

liveries at its premises, whereupon the Company began to haul its freight in its own trucks to the loading platforms of the motor carriers for shipment (R. 32; 118).

Petitioner followed the American Iron trucks to the premises of the motor carriers, and picketed them while they remained there (R. 32; 124-125). The signs worn by the pickets did not name American Iron, stating simply that petitioner was on strike (R. 32; 113). Petitioner admittedly intended that this picketing would induce the carriers' employees not to "get on the American Iron equipment and handle the freight" (R. 124-125, 119).

In addition to picketing the American Iron trucks at the carriers' docks, petitioner expressly requested employees of the motor carriers not to handle American Iron freight. Thus, at the dock of carrier Time, petitioner's Business Representative Foster, in the hope that Time employees "wouldn't get in the truck and be handling the stuff," informed a Time steward that petitioner had "a picket on a hot load of material out here" (R. 39; 123-124). Robert Pickett, a picket captain for petitioner, stated to Troxel, a dock steward for carrier Santa Fe, "Well, I hope you boys observe our picket and help us out" (R. 37; 159-160). Moreover, when an American Iron truck arrived at the dock of carrier Hall, petitioner's Business Representative Foster told a Hall employee, who was prepared to assist in unloading freight on the truck, that "he couldn't help," and the employee immediately stopped (R. 39-40; 111). Similarly, on the arrival of such a truck at the Lee Way dock, petitioner's agent

Pickett told William Hall, a Lee Way dock steward, that he "shouldn't" handle the freight on the truck (R. 40; 137).

Another union, General Drivers Local No. 886, was, at all times relevant herein, the collective bargaining representative of the employees of the motor carriers. Its contract with each of the motor carriers contained the following "hot cargo" clause (R. 41-42; 140, 187):

ARTICLE 4

* * * *

(b) Members of the Union shall not be allowed to handle or haul freight to or from an unfair company, provided this is not a violation of the Labor Management Relations Act of 1947.

As shown in the Board's petition in No. 273 (p. 4), Local 886 aided petitioner by invoking this clause and directing the carriers' employees not to handle American Iron freight.

The Board, with two members dissenting, concluded that petitioner's picketing and allied activities at the carriers' docks was violative of Section 8(b)(4)(A) of the Act (R. 65). In the light of petitioner's direct appeals to secondary employees, the failure of its picket signs to specify American Iron as the target of its dispute, and the fact that American Iron's separate premises afforded ample opportunity for picketing the primary employer there (R. 65, 34-35), the Board rejected petitioner's contention that its activity at the docks did not have a secondary object, but was merely an incident of legitimate primary activity directed against American

Iron. The Board also rejected petitioner's further contention that its activity at the docks was privileged on account of the "hot cargo" clause in Local 886's contracts with the Carriers (R. 64, 65, n. 5, 36).

2. *The mootness contention*

Petitioner's strike against American Iron started on September 15, 1954, and the charges initiating the Board proceeding were filed on September 23 and 24 (R. 2, 11). On October 21, two days before a complaint issued on the charges (R. 8, 15), petitioner and American Iron entered into a new contract, whereupon the strike and the attendant picketing ended (R. 31). Petitioner contended that these developments rendered the Board proceeding moot and it should thus have been dismissed by the Board. The Board rejected this contention on the ground that, under settled principles, the voluntary cessation of unfair labor practices does not deprive the Board of power to bar a recurrence of those practices by adding the sanction of a Board order (R. 31).

B. The Decision of the Court Below

The court below (with one judge dissenting) sustained the Board's unfair labor practice finding and order with respect to petitioner. The court held that, although the "hot cargo" clause in the carriers' contract with Local 886 immunized that union's inducement of the carriers' employees from the ban of Section 8(b)(4)(A),[3] the clause afforded no protection

[3] This holding is the subject of the Board's petition in No. 273.

to petitioner since it was neither a party to, nor otherwise connected with, the contract (Pet. 17a). Respecting petitioner's other contentions, the court held that: (1) there was "substantial evidence" to support the Board's finding that the picketing at the carriers' docks was aimed at the carriers' employees and thus not legitimate primary activity; and (2) the cessation of the strike did not render the proceeding moot, for orders dealing with unfair labor practices have "preventive as well as remedial effects" (Pet. 18a).

DISCUSSION

1. The Board does not oppose the petition for certiorari insofar as it relates to the first question, namely, whether a hot cargo agreement immunizes from the proscription of Section 8(b)(4)(A) secondary boycott activity by a union which is not a party to the agreement. In *Local 1976, United Brotherhood of Carpenters etc.* v. *National Labor Relations Board* and *National Labor Relations Board* v. *General Drivers etc.*, Nos. 127 and 273, respectively, this Term, both of which are pending on petitions for writs of certiorari, the question is whether a hot cargo agreement immunizes such conduct by a union that is a party to the agreement. The two questions are obviously closely related. Accordingly, we believe that, if the Court grants review in Nos. 127 and 273, the petition here should also be granted with respect to the first question presented.

2. With respect to the other two questions presented by this petition, neither of them raises issues warranting further review by the Court.

Petitioner's contention that its inducement of the carriers' employees was nevertheless lawful as an incident of legitimate primary picketing against American Iron (Pet. p. 10, "5") presents merely a question of evidence. The court below correctly concluded that "there is substantial evidence to sustain the findings of the Board" (Pet. 18a; see also, pp. 4-5, *supra*) and there is no reason to depart from the normal rule that factual issues are not reviewed by this Court. *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503.

Petitioner's further contention (Pet., p. 10, "4") that the Board proceeding was rendered moot by a settlement of the underlying dispute is clearly insubstantial in the light of settled authority. Discontinuance of unfair labor practice conduct does not preclude the Board from barring its resumption in the future. *National Labor Relations Board* v. *Mexia Textile Mills, Inc.*, 339 U.S. 563, 567-568; *National Labor Relations Board* v. *Pool Manufacturing Co.*, 339 U.S. 577, 581-582; *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U.S. 217, 225; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 271.

CONCLUSION

The Board does not oppose the grant of certiorari limited to the first question presented.

Respectfully submitted,

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